

The Honorable Robert J. Bryan

UNITED STATES DISTRICT COURT FOR THE
WESTERN OF WASHINGTON
AT TACOMA

JOSEPH N. D'AMICO, an individual;
FORT DISCOVERY CORP, a Washington
corporation; SECURITY SERVICES
NORTHWEST, INC., a Washington
corporation,

Plaintiffs,

v.

JEFFERSON COUNTY, a Washington
county; DAVID STANKO; ROBERT
GEB0; KATHLEEN KLER,

Defendants.

No. 3:20-cv-05253-RJB

DEFENDANT KATHLEEN KLER'S
MOTION FOR SUMMARY
JUDGMENT

NOTE OF MOTION CALENDAR:

SEPTEMBER 25, 2020
WITHOUT ORAL ARGUMENT

I. INTRODUCTION AND SUMMARY OF ARGUMENT

Former Jefferson County Commissioner Kathleen Kler moves for summary judgement of the sole claim against her: civil conspiracy under state law. Commissioner Kler denies that she engaged in any civil conspiracy. Plaintiffs are required to produce clear, cogent and convincing evidence of the conspiracy, and cannot. It has been over six months since this lawsuit was filed and it alleges conduct that occurred years ago. In the absence of admissible evidence meeting the standard, the case against Kler must be dismissed.

II. FACTS

This case was filed March 16, 2020. ECF #1. In the initial complaint, all sitting County Commissioners were named as defendants, as well as Kathleen Kler, a former commissioner. *Id.* A First Amended Complaint was filed April 16, 2020, and still named Kler and the current commissioners. ECF #17. A Second Amended Complaint was filed July 15, 2020, and dropped the current commissioners, but maintained the claim against Kler. ECF #32.

In the Second Amended Complaint, Plaintiffs allege that former Sheriff Dave Stanko “implemented a plan to shut down the gun range outside of the legal process.” ECF #32, Paragraph 4.12. Plaintiffs allege that Kathleen Kler knew of and “supported his actions.” *Id.* Paragraph 4.16. The sole cause of action against Kler is the allegation that she engaged in a civil conspiracy with Stanko. *Id.* Paragraph 5.39.

Kler’s testimony is that she did not enter into any conspiracy with the Sheriff. *Declaration of Kler.* She did believe that the Sheriff was taking legal and appropriate steps to end illegal shooting on Plaintiffs’ property. *Id.* She thanked him for his work. This was not an agreement to do anything. *Id.* She never believed the Sheriff was acting illegally, with an illegal purpose or illegal means. She denied any conspiracy. *Id.*

III. LAW AND ARGUMENT

To establish a civil conspiracy, Plaintiffs must prove by clear, cogent and convincing evidence that (1) two or more people combined to accomplish an unlawful purpose, or combined to accomplish a lawful purpose by unlawful means; and (2) the conspirators entered into an agreement to accomplish the object of the conspiracy. *Corbit v. J.I. Case Co.*, 70 Wash.2d 522, 528–29, 424 P.2d 290 (1967). Mere suspicion or commonality of interests

1 is insufficient to prove a conspiracy. *Wilson v. State*, 84 Wn. App. 332, 351, 929 P.2d 448,
 2 459 (1996) “[When] the facts and circumstances relied upon to establish a conspiracy are as
 3 consistent with a lawful or honest purpose as with an unlawful undertaking, they are
 4 insufficient.” *All Star Gas, Inc., of Washington v. Bechard*, 100 Wn. App. 732, 740, 998 P.2d
 5 367, 372 (2000).

6 To preclude summary judgment of a civil conspiracy claim, a nonmoving party may
 7 not rely solely on speculation and argumentative assertions. Upon the submission by the
 8 moving party of adequate declarations, the nonmoving party must set forth specific
 9 admissible facts to rebut the moving party's contentions and show that a genuine issue as to
 10 a material fact exists. *Allard v. Bd. of Regents of Univ. of Washington*, 25 Wn. App. 243,
 11 247, 606 P.2d 280, 282 (1980). For example, in *Allard*:

13 Dr. Allard alleges that the faculty of his department at the University agreed
 14 to disregard his teaching ability thereby insuring he would be denied tenure.
 15 In support of this allegation he points to correspondence between his
 16 department chairman and others expressing reservations about his teaching
 17 ability which is inconsistent with other correspondence to him praising
 18 those abilities. He also points to irregularities in his personnel file and to an
 19 affidavit by a senior faculty member, Dr. Rey, that he told other faculty to
 20 disregard Allard's teaching ability in considering him for tenure. But in none
 21 of these is there evidence of an agreement. If evidence of an agreement is
 22 not provided, a conspiracy cannot be established.

23 *Allard v. Bd. of Regents of Univ. of Washington*, 25 Wn. App. 243, 247–48, 606 P.2d 280,
 24 282–83 (1980).

25 Here, there is an absence of any agreement. *Declaration of Kler*. And even if former
 26 Sheriff Stanko can be shown to have acted with illegal purpose or motive, there is no evidence
 27 that Kler knew *or* approved of an illegal purpose or motive. There is a manifest lack of

1 evidence and the Motion for Summary Judgement dismissing all claims against Kler should
2 be granted.

3 DATED: September 3, 2020

4 KEATING, BUCKLIN & McCORMACK, INC., P.S.

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6 By: /s/ Andrew Cooley
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CERTIFICATE OF SERVICE

I hereby certify that on September 3, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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